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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of

Implementation of the Pay Telephone  
Reclassification and Compensation  
Provisions of the Telecommunications  
Act of 1996

CC Docket No. 96-128

COMMENTS OF THE  
AMERICAN PUBLIC COMMUNICATIONS COUNCIL  
ON THE RBOC/GTE/SNET PAYPHONE COALITION'S  
PETITION FOR CLARIFICATION

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Pursuant to the Common Carrier Bureau's Public Notice, DA 99-862, released April 15, 1999, the American Public Communications Council ("APCC") submits the following comments on the RBOC/GTE/SNET Payphone Coalition's ("LEC Coalition") petition for clarification of the per-call compensation requirement of the Payphone Orders ("Petition").<sup>1</sup> The RBOC/GTE/SNET Coalition requests a ruling, on a going-forward

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<sup>1</sup> Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Report and Order, 11 FCC Rcd 20541 (1996), recon., 11 FCC Rcd at 21233 (1996) ("Payphone Order Reconsideration") (together the "Payphone Orders"), affirmed in part and vacated in part Illinois Public Telecom. Ass'n v. FCC, 117 F.3d 555 (D.C. Cir. 1997); Second Report and Order, 13 FCC Rcd 1778 (1997), remanded, MCI Telecomm. Corp. v. FCC, No. 97-1675 (D.C. Cir. May 15, 1998); Third Report and Order and Order on Reconsideration of the Second Report and Order, FCC 99-7, released February 4, 1999, petitions for reconsideration and review pending. See also Memorandum Opinion and Order, DA 98-642, released April 3, 1998 ("April 3 Order").

basis, that the carrier responsible for paying per-call compensation is “the entity identified by the Carrier Identification Code (‘CIC’) used to route the compensable call from the Local Exchange Carrier’s network.” Petition at 2.

### **STATEMENT OF INTEREST**

APCC is a national trade association representing about 2,000 independent providers of pay telephone equipment, services, and facilities. APCC seeks to promote competitive markets and high standards of service for pay telephones. To this end, APCC has actively participated in all FCC proceedings addressing payphones and payphone compensation.

APCC also operates a compensation collection clearinghouse on behalf of subscribing APCC members and more than 1,000 other subscribing PSPs. APCC’s clearinghouse processes compensation claims for more than 400,000 payphones each quarter.

### **DISCUSSION**

APCC strongly agrees that the LEC Coalition has identified a critical flaw in the current implementation of payphone compensation. In the Payphone Order Reconsideration, the Commission ruled that “a carrier is required to pay compensation and provide per-call tracking for the calls originated by payphones if the carrier maintains its own switching capability.” Payphone Order Reconsideration, ¶ 92. The Commission assumed that these resellers would track calls and that it would be practical for PSPs to

collect compensation from these entities in an efficient manner. In fact, PSPs are currently able to collect only about a portion of the estimated compensation owed them, largely because of the problem raised by the LEC Coalition's petition. Collection shortfalls are of such a magnitude as to threaten the stability of the payphone industry. The Commission must proceed as quickly as possible to address the problem and simplify the administration of the compensation system.

## **I. THE PROBLEM**

Under carrier interpretations of the Commission's compensation rulings, facilities-based carriers are handling millions of payphone calls for which they have determined that compensation is not their responsibility because the calls are routed to "switch-based resellers." Facilities-based carriers are making these determinations unilaterally, based on their own interpretations of the rules and their own unilateral assessments regarding which of their customers they consider to be "switch-based resellers."

The facilities-based IXC handling such calls has access to complete information about how they reach the IXC's network, how the calls are routed to the IXC's customers, and the identity of those customers.<sup>2</sup> By contrast, PSPs have very limited information about these calls and what happens to them when they leave the payphone. However, IXCs generally have provided no information to PSPs about calls routed to resellers. In response to invoices, IXCs provide only a monthly total of compensated calls for each

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<sup>2</sup> For example, IXCs obviously know which of their customers have requested to have the IXC's "payphone surcharge" removed from their bills, on the grounds that the customer is a "switch-based reseller" who is independently liable for paying compensation.

payphone ANI. IXC's do not identify the number of calls that were not paid because they were routed to "switch-based resellers," nor do they identify the resellers involved. In the rare case where APCC has been able to extract information about the identities of customers that the IXC believes to be resellers, the IXC asserted that it was not required to provide any information more detailed than the resellers' names, and that it could not do so due to customer confidentiality concerns. Furthermore, the basis of the belief that an IXC customer is a reseller is not explained; it appears that the IXC's classify customers as resellers without actual inquiry to the customer.

As a consequence, the PSPs are left with several extremely burdensome tasks: (1) identifying those switch-based resellers that are receiving a significant volume of calls from payphones and who are therefore worthwhile candidates for lawsuits to enforce payment; (2) identifying which of those resellers are "switch-based" resellers; (3) finding those resellers;<sup>3</sup> and (4) extracting payment from each of these resellers.<sup>4</sup>

These are monumental tasks. Given the huge number of resale carriers in the United States, the vast majority of resellers appear to have reasoned that they can avoid paying compensation simply by "keeping their heads down." For example, at the end of 1998, APCC invoiced some 1,200 companies that it identified as carriers. APCC requested

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<sup>3</sup> Many resellers do not appear to have filed tariffs.

<sup>4</sup> While tracking down and collecting payment from resellers poses acute difficulties, there is a major remaining problem with facilities-based carriers. In order to collect the fair compensation to which they are entitled, PSPs must also determine which of the calls handled by facilities-based carriers have been *incorrectly* identified by the facilities-based carrier as routed to switch-based resellers, and provide proof that the customers receiving these calls are not switch-based resellers, in order to extract compensation for those calls from the facilities-based carrier.

each carrier to disclose the number of calls received from APCC's PSP clients and to pay compensation for such calls. Less than one-third of the carriers even responded to APCC's letters. Only 73 paid any compensation. Most of the carriers who responded claimed they were not required to pay compensation to PSPs. Recently, APCC filed lawsuits against seven resellers who have not paid any compensation to PSPs – a small fraction of the total number of nonpaying carriers.

The experience of APCC and other PSP representatives demonstrates the extent of the problem. For example, in response to a complaint from a LEC PSP about the low level of Sprint's compensation payments, Sprint apparently determined that about 20% of its payphone-originated traffic was routed to switch-based resellers. See letter to Laurence E. Strickling from Richard Juhnke, December 4, 1998, at 2 ("December 4 Ex Parte"). For example, an IXC "took back" from APCC's clearinghouse clients more than 25% of the compensation initially paid for the fourth quarter of 1997, because it determined that millions of calls handled by its network were delivered to switch-based resellers. In response to requests for cooperation in identifying the resellers involved, the carrier provided a list of hundreds of names of entities that it said were switch-based resellers. However, the carrier did not provide any additional information, such as contact names, addresses and telephone numbers, the 800 access numbers involved, or the volume of calls routed to each "reseller." The carrier claimed that it was not required to disclose detailed information and that the information was confidential. Some of the resellers on the carrier's list had been previously contacted by APCC and had claimed that they were *not* responsible for paying compensation. Other large resellers on the carrier's list appear to have gone out of business, and it may be impossible for the affected PSPs ever to collect any compensation for those calls. Other facilities-based carriers did not provide APCC any

information -- even a list of names of customers they considered to be switch-based resellers -- although recently some carriers apparently have begun to provide some information.

Thus, the amount of cooperation required from IXC's to identify "switch-based reseller" customers who are liable for compensation is a matter of dispute between PSPs and IXC's. So far, the only remedy APCC has successfully pursued to date is to collect 100,000 toll-free numbers, submit the numbers to an IXC, and have the IXC return details on the specific resellers associated with the numbers that the IXC has determined belong to switch-based resellers. Cf. April 3, Order, ¶ 38.<sup>5</sup>

## **II. THE COMMISSION MUST ACT AS QUICKLY AS POSSIBLE TO SIMPLIFY AND CLARIFY COMPENSATION RESPONSIBILITIES**

APCC's experience with carriers demonstrates that, contrary to Sprint's claim in its December 4 Ex Parte (at 6), carriers' implementation of the current rules on per-call compensation *do* "impose inordinate burdens" on PSPs seeking payment. Switch-based resellers have no incentive to voluntarily identify themselves as such, and facilities-based carriers, who have a customer relationship with resellers and consequently are in a far better position to identify them than payphone providers, are not providing adequate information to assist PSPs in matching unpaid calls with responsible resellers. Further, carriers and

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<sup>5</sup> APCC believes that more is required. On the question of the degree of cooperation required of facilities-based carriers, APCC is currently in ongoing discussions with one carrier as a result of intervention by the Commission's enforcement staff.

resellers appear to be following a number of different approaches to determining when a customer is responsible for paying compensation as a “switch-based reseller.” Since each carrier claims a right to decide for itself whether payphone calls traversing its network are its own responsibility or the responsibility of some other carrier, the PSP is left in the position of guessing where to turn in order to collect the compensation to which it is entitled. Under these circumstances, a facilities-based carrier and its reseller customer may each determine that it is *not* responsible for paying compensation for calls to a particular number, with the result that neither the facilities-based carrier nor the reseller tracks the calls.<sup>6</sup>

Such evasion of responsibility is especially intolerable because the payphone industry (and the Commission) have just gone through more than a year of finger-pointing and evasion of responsibility by LECs and IXC's over the implementation of Flex ANI. Now, even when Flex ANI is transmitted on every call, the call still may not be tracked because the facilities-based carrier claims it has no responsibility to track the call, and because the reseller may be either unaware of or hoping to evade its call tracking responsibility and has

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<sup>6</sup> In order to track calls, a switch-based reseller must either (1) arrange for the underlying facilities-based carrier to track calls on its behalf, or (2) arrange for the information required to track calls (i.e., ANIs and payphone-specific ANI coding digits) to be transmitted from the FSB's network to the reseller's switch. It is APCC's understanding that in order to implement the second of these options, the reseller must request from the facilities-based carrier a specific type of service that utilizes specialized connections such as primary rate ISDN trunks. Otherwise, even though the underlying facilities-based carrier is subscribing to Flex ANI, the payphone-specific digits will be stripped off or altered when the call reaches the facilities-based carrier's network and will not be passed on to the switch-based reseller.

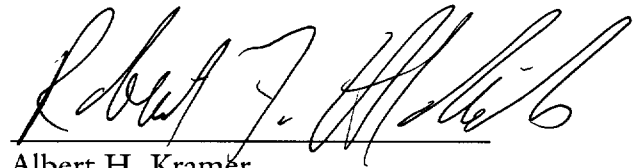


not ordered the appropriate service from the facilities-based carrier. Of course, failure to track calls cannot relieve carriers from liability to pay compensation for calls for which they are responsible. However, if calls are not tracked at all, carriers will surely argue that PSPs cannot collect compensation for them. Even if such calls are ultimately identified and collection of compensation is pursued at a later time, the delay is likely to be prejudicial to the PSP attempting to collect compensation.

There is no valid reason for the compensation system to operate in such a fashion as to affirmatively hinder the tracking of calls and the collection of compensation. Yet, that is exactly what the system as currently interpreted and implemented by carriers is doing today. The Commission must act immediately to simplify compensation payment responsibilities under the Commission's rules. At a minimum, the Commission must clarify the responsibilities of facilities-based carriers and resellers under its compensation rules.

Dated: May 17, 1999

Respectfully submitted,

Handwritten signatures of Albert H. Kramer and Robert F. Aldrich. The signature of Robert F. Aldrich is on the left, and the signature of Albert H. Kramer is on the right.

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I hereby certify that on May 17, 1999, a copy of the foregoing Comments of the American Public Communications Council on the RBOC/GTE/SNET Payphone Coalition's Petition for Clarification was delivered by first-class U.S. Mail, postage pre-paid to the following parties:

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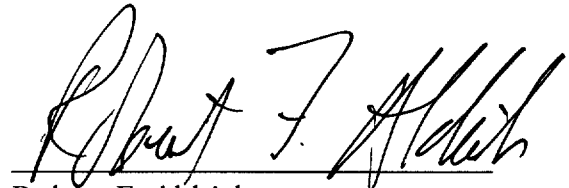
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